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FEDERAL TRADE COMMISSION  
12

13 **UNITED STATES DISTRICT COURT**  
14 **CENTRAL DISTRICT OF CALIFORNIA**  
15 **WESTERN DIVISION**

16  
17 FEDERAL TRADE COMMISSION,  
18 Plaintiff,  
19 v.  
20 PRODUCTIVE MARKETING, INC., DBA  
DATA INFORMATION SERVICES, DATA  
21 SERVICES, NATIONAL PROPERTY  
SOLUTIONS, a California  
22 corporation, and MATTHEW B.  
HYMAN, ZACHARY A. HYMAN, and  
23 JOSHUA HYMAN, individually and  
24 as officers of Productive  
Marketing, Inc.,  
25 Defendants.  
26

Civ. No. 00-06502NM(BQRx)  
**STIPULATED ORDER FOR  
PERMANENT INJUNCTION AS TO  
JOSHUA HYMAN**

27 Plaintiff, the Federal Trade Commission ("Commission" or  
28

1 "FTC"), has filed a complaint for permanent injunction and other  
2 equitable relief pursuant to Section 13(b) of the Federal Trade  
3 Commission Act ("FTC Act"), 15 U.S.C. § 53(b), charging  
4 defendants Productive Marketing, Inc., dba Data Information  
5 Services, Data Services, and National Property Services, and  
6 Matthew B. Hyman and Zachary A. Hyman, also dba Formula  
7 Solutions and Foreclosure Solutions, and Joshua Hyman, with  
8 deceptive acts and practices in connection with the advertising  
9 and telemarketing of auction information guides to consumers  
10 throughout the United States. The Commission's complaint  
11 alleges that defendants' deceptive acts and practices violate  
12 Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

13 The Commission and defendant Joshua Hyman, having been  
14 represented by counsel and acting by and through such counsel,  
15 have consented to the entry of this Stipulated Order for  
16 Permanent Injunction ("Stipulated Order") without a trial or  
17 adjudication of any issue of law or fact herein.

18 NOW, THEREFORE, the Commission and defendant, having  
19 requested the Court to enter this Stipulated Order, it is  
20 **ORDERED, ADJUDGED, AND DECREED** as follows:

21 **FINDINGS**

22 1. This is an action by the Commission instituted under  
23 Section 13(b) of the FTC Act, 15 U.S.C. § 53(b). Pursuant to  
24 this section, the Commission has the authority to seek the  
25 relief contained herein.

26 2. The Commission's complaint states a claim upon which  
27 relief may be granted against defendant under Sections 5 and  
28 13(b) of the FTC Act, 15 U.S.C. §§ 45 and 53(b).



1 to pay for goods or services offered through telemarketing.

2 3. **"Defendant"** means Joshua Hyman, by whatever names he  
3 might be known, as well as his successors, assigns, officers,  
4 agents, directors, servants, employees, salespersons,  
5 independent contractors, attorneys, corporations, subsidiaries,  
6 affiliates, all other persons or entities directly or indirectly  
7 under his control or under common control with him, and all  
8 other persons or entities in active concert or participation  
9 with him who receive actual notice of this Stipulated Order by  
10 personal service or otherwise, whether acting directly or  
11 through any corporation, subsidiary, division, or other device.

12 4. **"Document"** is synonymous in meaning and equal in scope  
13 to the usage of the term in Federal Rule of Civil Procedure  
14 34(a), and includes writings, drawings, graphs, charts,  
15 photographs, audio and video recordings, computer records, and  
16 other data compilations from which information can be obtained  
17 and translated, if necessary, through detection devices into  
18 reasonably usable form. A draft or non-identical copy is a  
19 separate document within the meaning of the term.

20 5. **"Person"** means any individual, group, unincorporated  
21 association, limited or general partnership, corporation, or  
22 other business entity.

23 6. **"Telemarketing"** means a plan, program, or campaign  
24 which is conducted to induce the purchase of goods or services  
25 by use of one or more telephones and which involves more than  
26 one interstate telephone call.

27 7. **"Information guide"** means any document that is  
28 advertised, offered for sale, or offered in conjunction with the

1 sale or marketing of any other item or service, and which is  
2 represented to contain information on how or where consumers may  
3 obtain vehicles or other consumer products at auction, or how or  
4 where to find properties for sale.

5 **I.**

6 **PROHIBITED BUSINESS ACTIVITIES**

7 **IT IS FURTHER ORDERED** that defendant and his agents,  
8 servants, employees, attorneys, and all persons or entities  
9 directly or indirectly under his control, and all other persons  
10 or entities in active concert or participation with him who  
11 receive actual notice of this Stipulated Order by personal  
12 service or otherwise, and each such person, are hereby  
13 permanently restrained and enjoined from:

14 A. Falsely representing, expressly or by implication,  
15 that a consumer's checking account or credit card information  
16 will not be used for the purpose of debiting the consumer's bank  
17 account or billing the consumer's credit card account;

18 B. Using a consumer's credit card, checking, or bank  
19 account number, or any portion thereof, to obtain payment from  
20 the consumer's credit card, checking, or bank account, unless  
21 defendant has disclosed to the consumer, immediately prior to  
22 and subsequent to obtaining the number, the fact that such  
23 information would be used to obtain payment from the consumer's  
24 credit card, checking, or bank account, and the amount and  
25 approximate date of the transaction;

26 C. Causing a consumer to be billed through his or her  
27 credit card or local telephone exchange carrier account for any  
28 product or service unless defendant has obtained the consumer's

1 express verifiable authorization to do so;

2 D. Debiting or charging a consumer's credit, bank, or  
3 checking account in an amount greater than the amount authorized  
4 by the consumer or on a date earlier than the date authorized by  
5 the consumer;

6 E. Falsely representing, expressly or by implication, any  
7 aspect of obtaining a refund, including but not limited to, the  
8 ease with which a consumer can obtain a refund;

9 F. Failing to disclose in a clear and conspicuous manner,  
10 prior to purchase, all material terms and conditions of  
11 defendant's refund or cancellation policies, or the fact that  
12 refunds or cancellations are not provided;

13 G. Misrepresenting, either orally or in writing,  
14 expressly or by implication, that:

15 (1) defendant will provide consumers with documents or  
16 information that will enable them to find local auctions where  
17 they can purchase merchandise at prices substantially below  
18 their fair market value, including but not limited to,  
19 misrepresenting that late model used vehicles sell at public  
20 auto auctions for an average price of \$1400;

21 (2) defendant will provide consumers with documents  
22 or information that will enable them to locate and purchase  
23 foreclosed or repossessed homes at prices substantially below  
24 their fair market values; or

25 (3) defendant will send consumers either a single  
26 information guide, or more than one information guide or other  
27 product or service, whether marketed, offered for sale or sold  
28 through the defendant or any other person, as a package for the

1 price of a single information guide, and that the cost of a  
2 single information guide will be charged to consumers' checking  
3 or credit card accounts;

4 H. Falsely representing any other material fact in  
5 connection with the marketing, advertising, offering for sale or  
6 sale of any good or service, including but not limited to,  
7 information guides.

8 **II.**

9 **RIGHT TO REOPEN**

10 **IT IS FURTHER ORDERED** that, the Commission's agreement to  
11 this Stipulated Order is expressly premised upon the financial  
12 condition of defendant, as represented in the financial  
13 information defendant provided to the Commission under cover of  
14 letters from counsel for defendant, dated July 7, August 7, and  
15 August 18, 2000 (hereinafter "financial statement"), which  
16 contains material information upon which the Commission relied  
17 in negotiating and agreeing upon this Stipulated Order.

18 If upon motion of the Commission, the Court finds that  
19 defendant failed to disclose any material asset, materially  
20 misrepresented the value of any asset, or made any other  
21 material misrepresentation or omission from the financial  
22 statement, the Court shall enter judgment against defendant in  
23 the amount of \$100,000, and the entire amount of the judgment  
24 shall become immediately due and payable, less any amount  
25 already paid.

26 Provided, however, that in all other respects, this  
27 judgment shall remain in full force and effect, unless otherwise  
28 ordered by the Court; and provided further, that proceedings

1 instituted under this Section are in addition to, and not in  
2 lieu of, any other civil or criminal remedies that may be  
3 provided by law, including but not limited to contempt  
4 proceedings, or any other proceedings that the Commission or the  
5 United States might initiate to enforce this Stipulated Order.

6 **III.**

7 **PROHIBITION ON DISSEMINATING CUSTOMER LISTS**

8 **IT IS FURTHER ORDERED** that defendant is permanently  
9 restrained and enjoined from selling, renting, leasing,  
10 transferring, or otherwise disclosing the name, address,  
11 telephone number, social security number, credit card number,  
12 bank account number, e-mail address, or other identifying  
13 information of any person who paid any money to defendant, or  
14 whose identifying information was obtained for the purpose of  
15 soliciting them to pay money to defendant at any time prior to  
16 the date this Stipulated Order is entered, in connection with  
17 the sale of the products or services referenced in the  
18 complaint. Provided, however, that defendant may provide such  
19 information to a law enforcement agency either voluntarily, or  
20 as required by any law, regulation, or court order.

21 **IV.**

22 **ACKNOWLEDGMENT OF RECEIPT**

23 **IT IS FURTHER ORDERED** that, within five (5) business days  
24 after receipt by defendant of this Stipulated Order as entered  
25 by the Court, defendant shall submit to the Commission a  
26 truthful sworn statement, in the form shown on **Appendix A**, that  
27 shall acknowledge receipt of this Stipulated Order.  
28

1 V.

2 DISTRIBUTION OF ORDER BY DEFENDANT

3 IT IS FURTHER ORDERED that, for a period of three(3) years  
4 from the date of entry of this Stipulated Order, defendant  
5 shall:

6 A. Provide a copy of this Stipulated Order to, and obtain  
7 a signed and dated acknowledgment of receipt of same from, each  
8 officer or director and each individual serving in a management  
9 capacity, whether designated as employees, immediately upon  
10 employing or retaining such persons, for any business in which:  
11 (1) defendant is an owner of the business or directly or  
12 indirectly manages or controls the business; and (2) the  
13 business is engaged in or assists others in engaging in  
14 telemarketing;

15 B. Provide a copy of this Stipulated Order, and obtain a  
16 signed and dated acknowledgment of receipt of same from, all  
17 personnel involved in responding to customer complaints or  
18 inquiries, and all sales personnel, whether designated as  
19 employees or engaged in telemarketing or the supervision of  
20 telemarketing, or otherwise, immediately upon employing or  
21 retaining any such persons, for any business in which: (1)  
22 defendant is an owner of the business or directly or indirectly  
23 manages or controls the business; and (2) the business is  
24 engaged in or assists others in engaging in telemarketing; and

25 C. Maintain for a period of three (3) years after  
26 execution and, upon reasonable notice, make available to  
27 representatives of the Commission the original signed and dated  
28 acknowledgments of the receipt of copies of this Stipulated

1 Order as required in subsections A and B of this Section.

2 **VI.**

3 **MONITORING BY DEFENDANT**

4 **IT IS FURTHER ORDERED** that defendant, in connection with  
5 any business in which: (1) defendant is an owner of the business  
6 or directly or indirectly manages or controls the business; and  
7 (2) the business is engaged in, or assists others in engaging in  
8 telemarketing, is hereby permanently restrained and enjoined  
9 from:

10 A. Failing to take reasonable steps sufficient to monitor  
11 and ensure that all employees and independent contractors  
12 engaged in sales or other customer service functions comply with  
13 Section I of this Stipulated Order. Such steps shall include  
14 adequate monitoring of sales presentations or other calls with  
15 customers, and shall also include, at a minimum, the following:  
16 (1) listening to the oral representations made by persons  
17 engaged in sales or other customer service functions; (2)  
18 establishing a procedure for receiving and responding to  
19 customer complaints; and (3) ascertaining the number and nature  
20 of customer complaints regarding transactions in which each  
21 employee or independent contractor is involved; provided that  
22 this Section does not authorize or require defendant to take any  
23 steps that violate any federal, state, or local law;

24 B. Failing to investigate promptly and fully any customer  
25 complaint received by any business to which this Section  
26 applies; and

27 C. Failing to take corrective action with respect to any  
28 sales person whom defendant determines is not complying with

1 this Stipulated Order, which may include training, disciplining,  
2 and/or terminating such sales person.

3 **VII.**

4 **RECORD KEEPING**

5 **IT IS FURTHER ORDERED** that, for a period of three (3) years  
6 from the date of entry of this Stipulated Order, defendant, in  
7 connection with any business in which: (1) defendant is an owner  
8 of the business or directly or indirectly manages or controls  
9 the business; and (2) the business is engaged in or assists  
10 others in engaging in telemarketing, is hereby restrained and  
11 enjoined from failing to create, and from failing to retain for  
12 a period of three (3) years following the date of such creation,  
13 unless otherwise specified:

14 A. Books, records, and accounts that, in reasonable  
15 detail, accurately and fairly reflect the cost of goods or  
16 services sold, revenues generated, and the disbursement of such  
17 revenues;

18 B. Records accurately reflecting: the name, address, and  
19 telephone number of each person employed in any capacity by such  
20 business, including as an independent contractor; that person's  
21 job title or position; the date upon which the person commenced  
22 work; and the date and reason for the person's termination, if  
23 applicable. Any business subject to this Section shall retain  
24 such records for any terminated employee for a period of two (2)  
25 years following the date of termination;

26 C. Records containing the names, addresses, telephone  
27 numbers, dollar amounts paid, quantity of items or services  
28 purchased, and description of items or services purchased, for

1 all customers to whom such business has sold, invoiced, or  
2 shipped any goods or services;

3 D. Records that reflect, for every customer complaint or  
4 refund request, whether received directly or indirectly or  
5 through any third party:

6 1. the customer's name, address, telephone number,  
7 and the dollar amount paid by the customer;

8 2. the written complaint or refund request, if any,  
9 and the date of the complaint or refund request;

10 3. the basis of the complaint, including the name of  
11 any sales person complained against, and the nature and  
12 result of any investigation conducted concerning any  
13 complaint;

14 4. each response and the date of the response;

15 5. any final resolution and the date of the  
16 resolution; and

17 6. in the event of a denial of a refund request, the  
18 reason for the denial; and

19 E. Copies of all sales scripts, training materials,  
20 advertisements, or other marketing materials utilized; provided  
21 that copies of all sales scripts, training materials,  
22 advertisements, or other marketing materials utilized shall be  
23 retained for three (3) years after the last date of  
24 dissemination of any such materials.

25 **VIII.**

26 **COMPLIANCE REPORTING BY DEFENDANT**

27 **IT IS FURTHER ORDERED** that, in order that compliance with  
28 the provisions of this Stipulated Order may be monitored:

1           A.     For a period of three (3) years from the date of entry  
2 of this Stipulated Order, defendant shall notify the Commission  
3 of the following:

4                 1.     Any changes in defendant's residence, mailing  
5 address, or telephone numbers, within ten (10) days of the  
6 date of such change;

7                 2.     Any changes in defendant's employment status  
8 (including self-employment) within ten (10) days of such  
9 change. Such notice shall include the name and address of  
10 each business that defendant is affiliated with or employed  
11 by, a statement of the nature of the business, and a  
12 statement of defendant's duties and responsibilities in  
13 connection with the business or employment; and

14                3.     Any proposed change in the structure of any  
15 business entity owned or controlled by defendant, such as  
16 creation, incorporation, dissolution, assignment, sale,  
17 merger, creation, or dissolution of subsidiaries, proposed  
18 filing of a bankruptcy petition, or change in the corporate  
19 name or address, or any other change that could affect  
20 compliance obligations arising out of this Stipulated  
21 Order, thirty (30) days prior to the effective date of any  
22 proposed change; provided, however, that with respect to  
23 any proposed change in the business about which defendant  
24 learns less than thirty (30) days prior to the date such  
25 action is to take place, the defendant shall notify the  
26 Commission as soon as is practicable after learning of such  
27 proposed change;

28           B.     One hundred eighty (180) days after the date of entry

1 of this Stipulated Order, defendant shall provide a written  
2 report to the Commission, sworn to under penalty of perjury,  
3 setting forth in detail the manner and form in which that  
4 defendant has complied and is complying with this Stipulated  
5 Order. This report shall include but not be limited to:

6 1. Defendant's then-current residence address and  
7 telephone number;

8 2. Defendant's then-current employment, business  
9 addresses and telephone numbers, a description of the  
10 business activities of each such employer, and defendant's  
11 titles and responsibilities for each employer;

12 3. A copy of each acknowledgment of receipt of this  
13 Stipulated Order or summary thereof obtained by defendant  
14 pursuant to Section V, supra; and

15 4. A statement describing the manner in which  
16 defendant has complied and is complying with Sections I,  
17 III, V, VI, and VII of this Stipulated Order;

18 C. Upon written request by a representative of the  
19 Commission, defendant shall submit additional written reports  
20 (under oath, if requested) and produce documents on fifteen (15)  
21 days' notice with respect to any conduct subject to this  
22 Stipulated Order;

23 D. For the purposes of this Stipulated Order, defendant  
24 shall, unless otherwise directed by the Commission's authorized  
25 representatives, mail all written notifications to the  
26 Commission to:

27 Federal Trade Commission  
28 Director, Northwest Region  
915 Second Avenue, Suite 2896

1 Seattle, Washington 98174  
2 Re: FTC v. Productive Marketing, Inc.;

3 E. For the purposes of this Section, "employment"  
4 includes the performance of services as an employee, consultant,  
5 or independent contractor; and "employers" include any  
6 individual or entity for whom defendant performs services as an  
7 employee, consultant, or independent contractor; and

8 F. For purposes of the compliance reporting required by  
9 this Section, the Commission is authorized to communicate  
10 directly with defendant after providing to defendant and  
11 defendant's counsel written notice five (5) days in advance of  
12 any communication.

13 **IX.**

14 **COMMISSION'S AUTHORITY TO MONITOR COMPLIANCE**

15 **IT IS FURTHER ORDERED** that the Commission is authorized to  
16 monitor defendant's compliance with this Stipulated Order by all  
17 lawful means, including but not limited to the following:

18 A. The Commission is authorized, without further leave of  
19 Court, to obtain discovery from any person in the manner  
20 provided by Chapter V of the Federal Rules of Civil Procedure,  
21 Fed. R. Civ. P. 26-37, including the use of compulsory process  
22 pursuant to Fed. R. Civ. P. 45, for the purpose of monitoring  
23 and investigating defendants' compliance with any provision of  
24 this Stipulated Order;

25 B. The Commission is authorized to use representatives  
26 posing as consumers and suppliers to defendant, defendant's  
27 employees, or any other entity managed or controlled in whole or  
28 in part by defendant, without the necessity of identification or

1 prior notice; and

2 C. Nothing in this Stipulated Order shall limit the  
3 Commission's lawful use of compulsory process, pursuant to  
4 Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49 and 57b-1, to  
5 investigate whether defendant has violated any provision of this  
6 Stipulated Order or Section 5(a) of the FTC Act, 15 U.S.C.  
7 § 45(a).

8 **X.**

9 **ACCESS TO BUSINESS PREMISES**

10 **IT IS FURTHER ORDERED** that, for a period of three (3) years  
11 from the date of entry of this Stipulated Order, for the purpose  
12 of further determining compliance with this Stipulated Order,  
13 defendant shall permit representatives of the Commission, within  
14 three (3) business days of receipt of written notice from the  
15 Commission to defendant and defendant's counsel:

16 A. Access during normal business hours to any office, or  
17 facility storing documents, of any business in which: (1)  
18 defendant is an owner of the business or directly or indirectly  
19 manages or controls the business; and (2) the business is  
20 engaged in or assists others in engaging in telemarketing. In  
21 providing such access, defendant shall permit representatives of  
22 the Commission to inspect and copy all documents relevant to any  
23 matter contained in this Stipulated Order, and shall permit  
24 Commission representatives to remove documents relevant to any  
25 matter contained in this Stipulated Order for a period not to  
26 exceed five (5) business days so that the documents may be  
27 inspected, inventoried, and copied; and

28 B. To interview the officers, directors, and employees,

1 including all personnel involved in responding to consumer  
2 complaints or inquiries, and all sales personnel, whether  
3 designated as employees, consultants, independent contractors or  
4 otherwise, of any business to which Subsection A of this Section  
5 applies, concerning matters relating to compliance with the  
6 terms of this Stipulated Order. The persons interviewed may  
7 have counsel present.

8 Provided that, upon application of the Commission and for  
9 good cause shown, the Court may enter an ex parte order granting  
10 immediate access to defendant's business premises for the  
11 purpose of inspecting and copying all documents relevant to any  
12 matter contained in this Stipulated Order.

13 **XI.**

14 **INDEPENDENCE OF OBLIGATIONS**

15 **IT IS FURTHER ORDERED** that the expiration of any  
16 requirements imposed by this Stipulated Order shall not affect  
17 any other obligation arising under this Stipulated Order.

18 **XII.**

19 **NOTICE OF ENTRY OF JUDGMENT**

20 **IT IS FURTHER ORDERED** that entry in the docket of this  
21 Stipulated Order by the Clerk of the Court shall constitute  
22 notice to defendant of the terms and conditions of this  
23 Stipulated Order, and that defendant waives all rights to  
24 contest in any future proceeding whether he was properly served  
25 with this Stipulated Order.

26 **XIII.**

27 **ENTRY BY CLERK**

28 There being no just reason for delay, the Clerk of the

1 Court is hereby directed to enter this Stipulated Order.

2 **XIV.**

3 **RETENTION OF JURISDICTION**

4 **IT IS FURTHER ORDERED** that the Court shall retain  
5 jurisdiction of this matter for all purposes.

6 The Commission and defendant Joshua Hyman hereby stipulate  
7 and agree to entry of the foregoing Stipulated Order, which  
8 shall constitute a final judgment in this action as to defendant  
9 Joshua Hyman.

10 SIGNED AND STIPULATED BY:

11 Dated: \_\_\_\_\_, 2000

\_\_\_\_\_  
NADINE S. SAMTER  
MARY T. BENFIELD  
FEDERAL TRADE COMMISSION

KENNETH H. ABBE (CA Bar #172416)  
Federal Trade Commission  
10877 Wilshire Boulevard, Suite  
700  
Los Angeles, California 90024

ATTORNEYS FOR PLAINTIFF

18  
19 Dated: \_\_\_\_\_, 2000

\_\_\_\_\_  
JOSHUA HYMAN  
Individually

22  
23 APPROVED AS TO FORM:

24 Dated: \_\_\_\_\_, 2000

\_\_\_\_\_  
STEVE COCHRAN (SBN 105541)  
LAURENCE G. SOLOV (SBN 175144)  
KATTEN MUCHIN ZAVIS  
1999 Avenue of the Stars, Suite  
1400  
Los Angeles, CA 90067-6042

ATTORNEYS FOR DEFENDANT

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**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of \_\_\_\_\_, 2000.

\_\_\_\_\_  
Honorable Nora M. Manella  
United States District Judge

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**APPENDIX A**

to Federal Trade Commission v. Productive Marketing, Inc., et al.,  
Stipulated Order for Permanent Injunction with  
Consumer Redress and Other Equitable Relief

**UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION**

_____	)	
FEDERAL TRADE COMMISSION,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civ. No. 00-06502 NM
	)	(BQRx)
	)	
PRODUCTIVE MARKETING, <u>et al.</u> ,	)	
	)	
Defendants.	)	
_____	)	

[Name of defendant], being duly sworn, hereby states and affirms as follows:

1. My name is \_\_\_\_\_. My current residence address is \_\_\_\_\_.

I am a citizen of the United States and am over the age of eighteen. I have personal knowledge of the facts set forth in this Affidavit.

2. I am a defendant in Federal Trade Commission v. Productive Marketing, Inc., et al., (United States District Court for the Central District of California).

3. On \_\_\_\_\_, I received a copy of the Stipulated Order for Permanent Injunction with Consumer Redress and Other Equitable Relief, which was signed by the Honorable Nora M. Manella, and entered by the Court on \_\_\_\_\_. A true and correct copy of the Order I received is appended

1 to this Affidavit.

2

3 I declare under penalty of perjury under the laws of the  
4 United States that the foregoing is true and correct. Executed  
5 on [date], at [city and state].

6

7

\_\_\_\_\_  
[Full name of defendant]

8

9 State of California  
10 County of \_\_\_\_\_

10

11 Subscribed and sworn to before me  
12 this \_\_\_\_ day of \_\_\_\_\_, 2000.

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\_\_\_\_\_  
Notary Public  
My Commission Expires:

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